

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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<b>Ameren Corporation</b>	)	
<b>on behalf of: Union Electric Company and</b>	)	
<b>Central Illinois Public Service Company;</b>	)	
<b>American Electric Power Service Corporation</b>	)	
<b>on behalf of: Appalachian Power Company,</b>	)	
<b>Columbus Southern Power Company,</b>	)	
<b>Indiana Michigan Power Company,</b>	)	
<b>Kentucky Power Company,</b>	)	
<b>Kingsport Power Company,</b>	)	
<b>Ohio Power Company, and</b>	)	
<b>Wheeling Power Company,</b>	)	
<b>Consumers Energy Company;</b>	)	
<b>Exelon Corporation</b>	)	<b>Docket No. RT01-88-000</b>
<b>on behalf of: Commonwealth Edison Company and</b>	)	
<b>Commonwealth Edison Company of Indiana;</b>	)	
<b>FirstEnergy Corp.</b>	)	
<b>on behalf of: American Transmission Systems, Inc.,</b>	)	
<b>The Cleveland Electric Illuminating Company,</b>	)	
<b>Ohio Edison Company,</b>	)	
<b>Pennsylvania Power Company, and</b>	)	
<b>The Toledo Edison Company;</b>	)	
<b>Illinois Power Company;</b>	)	
<b>The Dayton Power and Light Company;</b>	)	
<b>The Detroit Edison Company;</b>	)	
<b>Virginia Electric and Power Company</b>	)	

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**COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION**

**I. INTRODUCTION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the Commission's January 26, 2001, Notice of Filing, the Illinois Commerce Commission

(“ICC”) hereby submits its Comments in the above captioned proceeding.

## **II. BACKGROUND**

On January 16, 2001, the above captioned companies (the “Alliance Companies”) jointly submitted an Order No. 2000 compliance filing (“Alliance Companies’ Filing”). The Alliance Companies state that the Alliance Regional Transmission Organization (“Alliance RTO”) satisfies the minimum characteristics and functions for a regional transmission organization as set forth in Order No. 2000. The Alliance Companies further request that the Commission accept amendments to the Alliance Agreement and grant authorization to Ameren, ComEd, Illinois Power and DP&L to transfer ownership and/or functional control of their transmission facilities to the Alliance RTO.

## **III. ICC POSITION AND RECOMMENDATION**

The Alliance Companies state that their filing in this docket “demonstrates that the Alliance RTO proposal submitted in Docket Nos. ER99-3144-000 and EC99-80-000 (“Alliance dockets”), as amended by the September 15, 2000 compliance filing, satisfies the RTO characteristics and functions of Order No. 2000.” Alliance Companies’ Filing at 1. The ICC, however, disagrees that the filing satisfies the following requirements of Order 2000:

- ?? Order 2000 requires that the RTO reflect open architecture. In particular, any proposal to participate in an RTO must not contain any provision that would limit the capability of the RTO to evolve in ways that would improve its efficiency. The Alliance RTO proposal violates this requirement by permitting Alliance members to veto prospective new members and by not providing the Alliance RTO with a “call” right to convert Class C shares to Class B shares.
- ?? Order 2000 requires that the RTO have the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO. The Alliance RTO proposal, however, violates this requirement by reserving this right to the Alliance Companies during a transition period.
- ?? Order 2000 requires the RTO to be of proper scope and configuration. However, the Alliance RTO, as proposed, is of insufficient scope and configuration to obtain the Order 2000 standards concerning facilitation of competitive markets and internalization of parallel flows.

?? Order 2000 requires the RTO to have "operational control." The Alliance RTO proposal, however, preserves the rights of non-divesting transmission-owning utilities to perform the control area operator functions and does nothing to encourage the phase out of this aspect of Alliance Companies' operational control.

?? Order 2000 requires that the RTO be developed using a collaborative process and have a process in place to obtain stakeholder advice and input once the RTO is operational. However, the process proposed by the Alliance Companies for stakeholders to provide advice and input to the Alliance RTO was found to be flawed by the Commission. The Alliance Companies' proposal, which was not changed in the January 16 compliance filing, does not satisfy the requirements of Order 2000 for collaboration and stakeholder input.

Accordingly, the ICC requests that the Commission modify these provisions of the Alliance RTO proposal and Alliance RTO OATT to conform with Order 2000 as described below. Without such modifications, the Alliance RTO cannot be found to be Order 2000-compliant.

#### **IV. DISCUSSION**

##### **A. The Alliance RTO Proposal Violates the Open Architecture Requirement in Two Ways**

Order 2000 imposed an open architecture requirement on RTOs and RTO developers. Specifically, Section 35.34(l) of the rule adopted by Order 2000 requires that "any proposal to participate in an [RTO] must not contain any provision that would limit the capability of the [RTO] to evolve in ways that would improve its efficiency." 18 C.F.R. §35.34(l). The Alliance RTO proposal violates this requirement in two ways. The first way applies to the critical RTO formation period and the second is applicable after the Alliance RTO is formed.

**1. Existing Alliance Companies Control Whether New Applicants May be Admitted**

Article VIII of the Alliance Agreement permits a simple majority of the existing Alliance Companies to reject the application of new companies to join. This provision violates Section 35.34(l) of FERC's rules and should be eliminated.

**2. The Alliance RTO Should Have a "Call" Option that Mirrors the "Put" Option of Non-Divesting Class C Share-Owning Alliance Companies**

Section 3.3(c) of the Limited Liability Company Agreement of Alliance Transmission Company, LLC provides non-divesting Class C shareholders with a "put" option to exchange those Class C shares for Class B shares. This provision states as follows:

At the effective time that each initial Member that is a Non-Divesting Transmission Owner enters into an Operating Agreement with the Company, the Company will issue to each such Initial Member that is a Non-Divesting Transmission Owner the Class C Units set forth next to its name on Exhibit A hereto. Within \_\_\_\_ years of the Effective Date, an Initial Member that is a Non-Divesting Transmission Owner that is a holder of Class C Units may, by notice to the Managing Member and each other Member, request the Company, on a date set forth in such notice (which date shall be no fewer than 90 days after the date such notice is given), or such other date as to which such holder and the Managing Member agree, (the "Exchange Date") to exchange all, but not less than all, of such holder's Class C Units for the number of Class B Units set forth next to such holder's name on Exhibit A hereto. On the Exchange Date, such Class C Unit holder must (i) make the Capital Contribution set forth next to such holder's name on Exhibit A hereto, (ii) pay, or reimburse the Company for, all reasonable costs and expenses incurred by the Company in connection with the exchange of Units and acceptance of such Capital Contribution, and (iii) surrender Class C Units. Upon the satisfaction of the foregoing conditions, on the Exchange Date the Managing Member shall issue to such Class C Unit holder the number of Class B Units set forth next to such holder's name on Exhibit A hereto, and, from and after such date, such holder shall be entitled to the rights of a Class B Unit holder.

This provision appears to allow initial Alliance RTO members that join as non-divesting members (under which the Alliance RTO merely exercises "functional control" over their transmission facilities) to divest their transmission assets to the Alliance RTO by making a "Capital Contribution" of

those facilities. This is a positive feature of the Alliance RTO proposal. Indeed, the option to divest transmission facilities to the Alliance RTO should be extended to all members, not just initial members. One way for the Alliance RTO to become a transco is for member companies to divest their transmission facilities to the Alliance RTO. As it is, the Alliance RTO will merely exercise “functional control” over most of the facilities under its control and will not own those facilities and will not operate as a transco with respect to those facilities.

The three Illinois companies conditionally request Commission approval “of the proposed transfer of ownership and/or functional control of [their] transmission facilities to the Alliance RTO.” Alliance Companies’ Filing at 51, 53-54 (underlining added). The three Illinois companies did not indicate in the filing whether they intend to participate in Alliance as non-divesting Class C shareholders (subject only to functional control by the Alliance RTO) or whether they intend to participate as divesting Class B shareholders. However, if they participate as non-divesting Class C shareholders, there is little reason to expect that the functional control to be exercised by the Alliance RTO would be much different from the functional control that would be exercised by an RTO organized as an ISO.

However, while Section 3.3(c) of the Alliance Agreement is a positive feature, as far as it goes, it is not sufficient to satisfy the open architecture requirements of Order 2000. In particular, it overly limits “the capability of the [RTO] to evolve in ways that would improve its efficiency” as required in Order 2000. To correct this deficiency, the Alliance RTO should have a “call” option on the transmission facilities of the Class C unit holders that mirrors the “put” option in Section 3.3(c). Specifically, the Alliance RTO should be permitted to call on Class C unit holders to divest their transmission facilities to the Alliance RTO by making a Capital Contribution in exchange for other due consideration when doing so would enable the Alliance RTO to “improve its efficiency.” Such a call

option would assist the Alliance RTO to become a transco in reality, rather than in name only (as is now the case).

The Commission should require that these changes be made to the Limited Liability Company Agreement of Alliance Transmission Company, LLC in order to satisfy the open architecture requirements of Order 2000.

**B. The RTO Must Have Independent and Exclusive Authority Over Its Rates, Terms, and Conditions**

In Order 2000-A, the Commission stated that “where the RTO operates and provides transmission service over transmission facilities owned by another entity,” as is the case with the Alliance RTO’s exercise of functional control over all non-divested transmission facilities of Alliance members:

the RTO [must] have the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO, but that transmission owners have the right to make Section 205 filings to determine the appropriate payments for the RTO’s use of their facilities.

III FERC Stats & Regs ¶31,092 at 31,370.

The Alliance RTO proposal violates this Order 2000 requirement, at least during the transition period, by codifying a transition period rate and rate design moratorium. The Alliance Companies candidly admit as much in their Order 2000 compliance filing. Therein, they state that ‘[e]xcept as limited to preserve the rate design and moratorium during the transition period, the Alliance RTO has the exclusive and independent authority to change the terms and conditions of the Alliance OATT.” Alliance Companies’ Filing at 26 (underlining added). Under this arrangement, at least during the transition period, the Alliance RTO cannot be considered to be independent of the transmission owners as required by Order 2000.

**C. The RTO Must be of Proper Scope and Configuration**

Order 2000 requires that an RTO must serve a region of “sufficient scope and configuration to permit the Regional Transmission Organization to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.” 18 C.F.R. §35.34(j)(2). The Alliance Companies state that their filing “demonstrates that the Alliance RTO’s scope and configuration will permit it to maintain reliability, effectively perform the required Order No. 2000 RTO functions and support the development of efficient and competitive power markets.” Alliance Companies’ Filing at 31.

The ICC does not agree with the Alliance Companies that the Alliance RTO, even with additions of ComEd, Illinois Power, and Ameren, satisfies the scope and configuration requirement of Order 2000. In particular, the proposed Alliance RTO scope and configuration does not internalize loop flow over a large region and it does not thwart the exercise of market power or facilitate the broadest possible energy trading area as required by Order 2000. III FERC Stats & Regs ¶31,092 at 31,082.

With respect to loop flow, the Alliance Companies concede that “[w]here parallel flows can be identified, the Alliance RTO will include them in its ATC calculations.” Alliance Companies’ Filing at 40 (underlining added). This statement recognizes the insufficiency of the proposed Alliance RTO scope and configuration to internalize (i.e., identify) parallel flows.

With respect to facilitating the “broadest possible energy trading area,” the testimony of Dr. Peter Fox-Penner, who was, at the time (1998), testifying for the Midwest ISO companies, including Ameren, Illinois Power and ComEd, persuasively explained how holes in the RTO hinder the development of seamless market development. Direct Testimony of Dr. Peter Fox-Penner in Dkts. ER98-1438 and EC98-24 at 28 (Feb. 6, 1998). “Efficient and non-discriminatory power markets”



cannot optimally develop given the dis-aggregated geographic configuration of the proposed Alliance RTO. An RTO covering substantially all of the geographic area currently separately covered by the Midwest ISO and the Alliance RTO would satisfy Order 2000's scope and configuration requirements.

#### **D. Utility Control Over the Control Area Operator Functions Should be Phased Out**

The Alliance RTO proposal permits non-divesting transmission-owning utilities to retain traditional control area operator functions. Traditional control area operator functions include scheduling and economic dispatch, and balancing load and generation.

Order 2000 states that “we will not at this time require the RTO to operate what traditionally has been thought of as a single control area for its region.” III FERC Stats & Regs ¶31,089 at 31,091. However, Section 35.34(j)(3) of the rule adopted by Order 2000 requires that the RTO “must have operational authority for all transmission facilities under its control” and that if any operational functions are shared with entities other than the RTO, as is the case here where non-divesting transmission-owning utilities will retain the traditional control area operator functions, the RTO “must ensure that this sharing of operational authority will not adversely affect reliability or provide any market participant with an unfair competitive advantage.” 18 C.F.R. §35.34(j)(3). Order 2000 also requires that “the RTO must perform the control functions required to satisfy the minimum characteristics and functions in this Final Rule . . . in a non-discriminatory manner for all market participants” and that “[t]he system of operational control chosen must ensure reliable operation of the grid and non-discriminatory access to the grid by all market participants.” III FERC Stats & Regs ¶31,089 at 31,091.

The sharing of operating functions in the Alliance RTO proposal that permits non-divesting transmission-owning utilities to retain control of the control area operator functions does not satisfy Order 2000's requirements for RTO operational authority. In particular, it does not “ensure reliable

operation of the grid and non-discriminatory access to the grid by all market participants.” Dispersed control area operation unnecessarily complicates RTO real-time balancing and congestion management. For example, in its Order 2000 compliance filing (RT01-87), the Midwest ISO admits that, with respect to congestion management, there is no empirical data to indicate how locational marginal pricing would work in a decentralized dispatched region. Midwest ISO Order 2000 Compliance Filing at 55. Similarly, the Midwest ISO admits that, when the RTO does not centrally dispatch, real-time balancing (as required by Order 2000), is complicated because “it has been a challenge for the Midwest ISO to develop a mechanism for determining the market clearing price.” Id. at 66. We should not expect these difficulties arising from retaining decentralized dispatch will be any less for the Alliance RTO and its customers than they would be for the Midwest ISO and its customers, as both organizations are proposing similar congestion management and real-time balancing mechanisms. Utility retention of control area operator functions hinders the RTO’s operating authority and permits utilities to maintain barriers to non-discriminatory transmission access.

The ICC recognizes that the immediate consolidation and centralization of all control area operator functions in the RTO may have negative cost consequences. Nevertheless, given the benefits to be obtained, it is reasonable for the Alliance RTO to explore alternatives, as suggested in Order 2000, such as a hierarchical control structure where existing control areas are made subject to RTO direction. III FERC Stats & Regs ¶31,089 at 31,091. Similarly, the Alliance RTO could phase-in the assumption of control area operator functions over time so as to reach an end-state of control area consolidation by a date certain.

Finally, as the ICC originally requested in its March 16, 1998 Comments to FERC in the Midwest ISO dockets, even if the Commission finds that control area operator functions may remain

with the transmission-owning utilities, the Commission should make clear that the RTO has the authority, upon making appropriate regulatory filings, to assume the control area operator functions from the utilities if and when it finds that step necessary to accomplish its responsibilities under Order 2000. See, ICC Midwest ISO Comments at 31. The Alliance RTO proposal does not meet even this minimal standard. Indeed, the Alliance Companies state in their filing that, “the Alliance Companies will evaluate the feasibility of consolidating control area functions and will actively work to consolidate certain control area functions when economically feasible within the Alliance RTO.” Alliance Companies’ Filing at 32 (underlining added). Rather than permitting the Alliance Companies to retain this authority, the Commission should, instead, make clear that the Alliance RTO, once it is in operation, must have the authority to make these analyses and to pursue the consolidation of control area functions and the centralization of control area operator functions in the RTO.

**E. The Process Proposed By the Alliance Companies for Stakeholders to Provide Advice and Input To the Alliance RTO is Flawed**

In Order 2000, the Commission stressed that use of a “collaborative process” is a key element in the development of RTOs. III FERC Stats & Regs ¶31,089 at 31,221. The Commission devoted an entire section of Order 2000 to explaining the importance of the collaborative process.

With respect to ongoing oversight of an RTO and stakeholder input into an RTO, Order 2000 stated that “[w]here there is a non-stakeholder board, we believe that it is important that this board not become isolated ... [b]oth formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board.” III FERC Stats & Regs ¶31,089 at 31,074.

With respect to the role of state agencies, Order 2000 stated:

[W]e agree with NARUC that state Commissions ‘should fully participate in RTO formation and development.’ . . . State involvement is important for several reasons,

especially where RTOs are a critical element of the retail choice programs of many states. State commissions are in a unique position to assess whether a particular RTO design will help or hinder their efforts to promote retail competition.

III FERC Stats & Regs ¶31,089 at 31,074. Order 2000 further discusses the important role of state agencies once the RTO becomes operational. Id. Also, in Order 888, the Commission stated that “[a] governance structure that includes fair representation of all types of users would help to ensure that the ISO formulates policies, operates the system, and resolves disputes in a fair and non-discriminatory manner.” Order 888, FERC Stats. & Regs. ¶31,036 at 31,730-731

In the Commission’s January 24, 2001 Alliance Order, the Commission found that the process proposed by the Alliance Companies for stakeholders to provide input to the RTO was severely flawed. January 24, 2001 Alliance Order at 14. The Commission stated that “[t]he process that stakeholders can use to communicate and consult with an RTO should be developed in consultation with the stakeholders.” Id. The Alliance Companies were directed to “develop an advisory process in consultation with stakeholders.” Id.

The Alliance Companies’ January 16 compliance filing did not address these flaws in the process to collaborate with stakeholders (including state commissions) in RTO formation or to provide an ongoing role for stakeholders (including state commissions) once the RTO becomes operational. The Alliance Companies have not created a process that provides for “fair representation of all types of users.”

## **V. CONCLUSION**

WHEREFORE, for each and all of the foregoing reasons, the Illinois Commerce Commission respectfully requests that the Commission modify the provisions of the Alliance RTO Agreement and the Alliance RTO OATT as described above; and for any and all other appropriate relief.

March 8, 2001

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

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